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NOTE: CHANGES HAVE BEEN
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HYUNDAI CAPITAL AMERICA, JOHN MORIARTY
23 and SAM FROBE

24
25 **(Caption Continued On Next Page)**
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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
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10 ESTES AUTOMOTIVE GROUP,
11 INC. DBA MERCED HYUNDAI, a
12 California Corporation, ESTES
13 HOLDING COMPANY, LLC, a
14 California limited liability company,
15 JIM ESTES, and CARL
SCHNEIDER, an Individual,

16 Plaintiffs,

17 v.
18

19 HYUNDAI MOTOR AMERICA, a
20 California Corporation, HYUNDAI
21 CAPITAL AMERICA, FORMERLY
22 KNOWN AS HYUNDAI MOTOR
23 FINANCE COMPANY, a California
24 Corporation, JOHN MORIARTY, an
Individual, SAM FROBE, an
Individual, and Does 1-10 Inclusive,

25 Defendants.

CASE NO. SACV10-00287 JVS
(RNBx)

Complaint Filed: March 9, 2010
Honorable James V. Selna

**ORDER RE STIPULATED
PROTECTIVE ORDER**

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1 The parties to the above-captioned lawsuit possess information related to the
 2 subject matter of this action that is confidential, and they recognize that in the
 3 course of discovery proceedings, it may be necessary to disclose such information.
 4 Much of this information is, in turn, protected as trade secrets and confidential
 5 business and other information, or is otherwise protected from public disclosure by
 6 law. Accordingly, each party wishes to ensure that such information shall not be
 7 used for any purpose other than the proceedings in this case.

8 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, to protect
 9 such information, the parties to this action, by and through their respective counsel,
 10 enter into this stipulated protective order (hereafter, "Protective Order") as follows:

11 1. Application of Protective Order

12 All information, testimony, things or documents filed with the Court, or
 13 produced or given (either by a party or non-party) as part of discovery in this
 14 action shall be governed by this Protective Order, including without limitation all
 15 testimony, transcripts, exhibits, answers to interrogatories and other discovery
 16 requests, copies thereof, other documents and things, and all information otherwise
 17 obtained from a party pursuant to discovery and/or trial in this litigation that any
 18 party designates as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS'
 19 EYES ONLY" (hereafter, collectively referred to as "Confidential Material"). The
 20 provisions of this Protective Order shall apply to (i) the parties to this action
 21 (including any agents, employees, insurers, advisors, consultants, representatives,
 22 partners, successors, heirs and assigns); (ii) their respective counsel of record in
 23 this action (including other members of the respective legal teams who agree to be
 24 bound by the terms of this Protective Order, such as their partners, in-house
 25 counsel of a respective party, associates, employees, paralegals, expert consultants
 26 and expert witnesses) ("Counsel"); and (iii) any other person who produces or
 27 discloses Confidential Material in this action and who agrees to be bound by the
 28 terms of this Protective Order.

2. Confidential Designation

A party may designate as "CONFIDENTIAL" the whole or portion of any document or thing that the party reasonably believes in good faith, in accordance with F.R.C.P. Rule 26(c) contains confidential information, including but not limited to research, development, financial, technical, marketing, product planning, personal and/or commercial information not readily available to the public.

3. Confidential- Attorneys' Eyes Only Designation.

A party may designate as "CONFIDENTIAL - ATTORNEYS' EYES ONLY" the whole or that portion of any confidential information that the party reasonably believes in good faith, in accordance with F.R.C.P. Rule 26(c) contains highly sensitive information that, if disclosed to a competitor or a person who the party reasonably believes to have interests that are aligned with a competitor, would or may cause competitive harm, including but not limited to any (a) trade secrets, (b) confidential or competitively sensitive research, development, financial or commercial information, or (c) highly sensitive personal information (such as credit information, addresses and/or social security numbers). In addition, for confidential information which a party in good faith reasonably believes contains especially sensitive information, the disclosure of which to a competitor or a person who the party reasonably believes to have interests that are aligned with a competitor would likely result in harm to that party may further designate such confidential information as "COMPETITIVELY SENSITIVE." If another party's counsel believes that such designation of a document or documents is overly broad, they may seek relief from this order.

4. Designating and Marking Confidential Material.

Confidential Matter shall be designated and marked as follows:

A. Documents: Documents may be designated as "CONFIDENTIAL" by placing on each page the following legend (or equivalent thereof) on any such document: "CONFIDENTIAL." Documents may be designated as

1 "CONFIDENTIAL - ATTORNEYS' EYES ONLY" by placing on each page the
2 following legend (or equivalent thereof) on any such document: CONFIDENTIAL
3 - ATTORNEYS' EYES ONLY."

4 B. Magnetic Or Optical Media Documents: The parties agree that for
5 materials on magnetic or optical media (such as CD or DVD), the medium
6 container and the medium itself shall both be marked or labeled with the
7 appropriate confidentiality notice as described in Paragraph 4(A) above, and the
8 contents thereof shall be treated in accordance with this Protective Order.

9 Notwithstanding the foregoing, documents which are contained on magnetic or
10 optical media will be printed out by the producing party and stamped with the
11 appropriate confidentiality notice and produced to the other party in paper format,
12 unless such production shall result in the aggregate production exceeding the
13 equivalent of (10) bankers' boxes of documents, in which case the parties shall
14 meet and confer to determine whether to share the cost of creating an electronic
15 production database whereby confidentiality designations can be automatically
16 applied.

17 C. Physical Exhibits: The confidential status of a physical exhibit shall
18 be indicated by placing a label on said physical exhibit with the appropriate
19 confidentiality notice as described in Paragraph 4(A) above.

20 D. Written Discovery: In the case of information incorporated in answers
21 to interrogatories or responses to requests for admission, the appropriate
22 confidentiality designation as described in Paragraph 4(A) above shall be placed on
23 each answer or response that contains Confidential Material.

24 E. Deposition Proceedings: Whenever Confidential Material is to be
25 disclosed in a deposition, prior to making such disclosure, the party proposing to
26 do so shall inform the witness on the record that the use of such information is
27 subject to the terms of this Protective Order. If any person other than the witness is
28 present at the deposition and does not come within the categories of persons

1 defined in Paragraphs 8 or 9 of this Protective Order, that person shall not be
2 permitted to be present while Confidential Material is used during the deposition.
3 Notwithstanding the foregoing, attorneys shall not be precluded from examining a
4 witness concerning any Confidential Material if the record reveals that the
5 deponent or witness authored that material or previously received that material in
6 the normal course of business.

7 F. Designation of Transcripts: The attorney for any party or third party
8 shall designate portions of a deposition transcript as Confidential Material by
9 making such designation on the record during the deposition. The portions
10 designated during the deposition as "CONFIDENTIAL" or "CONFIDENTIAL-
11 ATTORNEYS' EYES ONLY" shall be separated and treated as provided in
12 Paragraphs 8 or 9 of this Protective Order (as appropriate) and shall be fully
13 subject to the relevant provisions of this Protective Order. Transcripts that are not
14 so designated on the record shall nevertheless be treated as "CONFIDENTIAL -
15 ATTORNEYS' EYES ONLY" until thirty (30) days after receipt of the deposition
16 transcript by counsel for the witness during which period counsel for the witness
17 may designate those portions of the deposition transcript (including exhibits) as
18 Confidential Material (as appropriate). All portions of any deposition transcript not
19 designated as Confidential Material shall be free from the provisions of this
20 Protective Order.

21 5. Inadvertent Misdesignation.

22 A designating party that inadvertently fails to mark an item as Confidential
23 Material (or marks an item with an incorrect designation of confidentiality) at the
24 time of production shall not be deemed to have waived in whole or in part any
25 claim of confidentiality, either as to the specific information disclosed or as to any
26 other information on the same or related subject matter. Any such misdesignated
27 material shall be correctly designated as Confidential Material as soon as
28 reasonably possible after the producing party becomes aware of the incorrect

1 designation. Such correction and notice thereof shall be made in writing,
 2 accompanied by substitute copies of each item appropriately marked. Within five
 3 (5) days of receipt of the substitute copies, the receiving party shall return or
 4 destroy the previously unmarked (or incorrectly marked) items and all copies
 5 thereof.

6 6. Challenging Designation of Confidential Materials

7 Any party may, in good faith, challenge the designation of Confidential
 8 Material in writing. Following receipt of such a written challenge, the parties shall
 9 have five (5) business days to attempt to negotiate a resolution of the challenge
 10 after which time the party objecting to the designation may file a motion with this
 11 Court seeking a determination that the designation is inappropriate. Any motion
 12 challenging a designation must be made in strict compliance with Local Rules 37-1
 13 and 37-2 (including the Joint Stipulation requirement). The designating party shall
 14 bear the burden of establishing that the challenged designation was appropriate
 15 under the terms of this Agreement and that the requirements for the issuance of
 16 protective order under F.R.C.P. Rule 26(c) have been satisfied. Notwithstanding
 17 the existence of any challenge to any designation made hereunder, the parties shall
 18 treat all Confidential Material as protected under the terms of this Protective Order
 19 until such time as the Court issues an order to the contrary.

20 **LIMITATIONS ON USE AND DISCLOSURE OF** 21 **CONFIDENTIAL MATERIAL**

22 7. Use of Confidential Material

23 All Confidential Material shall be used only for the purposes of this lawsuit
 24 and not for any other litigation, business, personal or other purposes whatsoever.
 25 Unauthorized use of Confidential Material includes, but is not limited to,
 26 disclosure of such materials to the public or inclusion of such materials in pre- or
 27 post-termination publicity regarding the litigation or disclosure of such materials to
 28 any person who is not authorized by Paragraphs 8 or 9 to have access to such

1 materials.

2 8. Disclosure of "Confidential-Attorneys' Eyes Only" Materials

3 Confidential Material designated as "CONFIDENTIAL - ATTORNEYS'
4 EYES ONLY" shall not be given, shown, made available or communicated in any
5 way to anyone other than:

6 A. Counsel - In-house counsel and outside counsel of record for the
7 respective parties to this litigation, including necessary secretarial, clerical and
8 litigation support or copy service personnel assisting such counsel.

9 B. Consultants and Experts - Consultants or expert witnesses retained
10 specifically for the prosecution or defense of this litigation, provided that each such
11 person has been cleared in accordance with the procedures set forth in Paragraph
12 11 below.

13 C. Judicial Personnel - The Court, Court personnel and Court reporters in
14 connection with this action.

15 D. Designated Representatives - Designated representatives who are
16 employees or officers of the party designating the material as Confidential-
17 Attorneys' Eyes Only, provided that each designated representative executes,
18 before receiving the disclosure, a copy of the Certification attached to this
19 Protective Order as Exhibit A.

20 E. Witnesses - Witnesses where at least one of the following conditions
21 applies:

- 22 i. The witness is a current employee of the designating party;
23 ii. The attorney taking the deposition and showing the witness the
24 Confidential Material represents the designating party;
25 iii. The witness's name appears on the Confidential Material as a
26 person who has previously seen or had access to the Confidential Material or is
27 otherwise established that the witness has previously seen or had access to the
28 Confidential Material or knows the information contained within it;

1 iv. The designating party has consented on the record of the
2 deposition to the showing of the Confidential Material to the witness; or

3 v. At least ten (10) days before a deposition, a party wishing to
4 show the witness the Confidential Material notifies the designating party of that
5 desire, with a specific listing of the Confidential Material to be so shown, and the
6 designating party fails to object in writing to such showing within that ten (10) day
7 period, but if an objection in writing is made, such Confidential Material will not
8 be shown to the witness until and unless the party wishing to show the Confidential
9 Material to the witness moves for and obtains appropriate relief from the Court
10 upon good cause shown.

11 Witnesses being shown Confidential Material under subparagraphs
12 (E)(i)-(v) shall not be allowed to retain copies of the Confidential Material. A
13 witness who was shown Confidential Material during a deposition, however, may
14 review the Confidential Material while reviewing his or her transcript, provided
15 that any Confidential Material is not retained by the witness after he or she has
16 completed his or her review of the transcript for accuracy.

17 9. Disclosure of "Confidential" Materials.

18 Confidential Material designated as "CONFIDENTIAL" may be revealed to
19 the persons designated in Paragraph 8 above, as well as to designated
20 representatives who are employees or officers of any named party to the litigation,
21 provided that each designated representative executes, before receiving the
22 disclosure, a copy of the Certification attached to this Protective Order as Exhibit
23 A.

24 10. Clearing of Consultants and Experts to see Designated Materials.

25 Prior to the disclosure to a consultant or expert witness of Confidential
26 Material, the party wishing to make the disclosure shall cause the
27 Consultant/Expert to execute the Consultant/Expert Certification form attached
28 hereto as Exhibit B. In addition, prior to making a disclosure of Confidential

1 Material, the party wishing to make the disclosure shall provide the other party a
2 current copy of the Consultant/Expert's curriculum vitae. Unless the other party
3 objects within five (5) calendar days of receiving the curriculum vitae, the
4 disclosure of confidential information may be made. Should a dispute arise as to
5 whether a party may disclose information to a Consultant/Expert, the objecting
6 party must demonstrate that notwithstanding the execution of the
7 Consultant/Expert Certification form, the Consultant/Expert is likely to violate the
8 terms of the Consultant/Expert Certification, causing competitive harm to the
9 objecting party. The parties agree that non-testifying Consultants or Experts
10 identified pursuant to this paragraph will not be deposed or contacted, formally or
11 informally, by the party to whom disclosure of their identity is made.

12 11. Submission of Confidential Material to the Court.

13 In accordance with Local Rule 79-5.1, if any papers to be filed with the
14 Court contain information and/or documents that have been designated as
15 "Confidential" or "Confidential – Attorneys' Eyes Only," the proposed filing shall
16 be accompanied by an application to file the papers or the portion thereof
17 containing the designated information or documents (if such portion is segregable)
18 and if appropriate, the application itself under seal; and the application shall be
19 directed to the judge to whom the papers are directed. For motions, the parties
20 shall publicly file a redacted version of the motion and supporting papers.

21 12. Protecting Confidential Material

22 Any person who receives any Confidential Material shall maintain such
23 material in a secure and safe area and shall exercise due and proper care with
24 respect to the storage, custody, use and/or dissemination of such material. No
25 copies of any Confidential Material shall be made except to the extent necessary
26 for litigation. If the duplicating process by which copies of Confidential Material
27 are made does not reproduce the "CONFIDENTIAL" or "CONFIDENTIAL -
28 ATTORNEYS' EYES ONLY" stamp appearing on the original, all copies shall be

1 stamped with the original CONFIDENTIAL" or "CONFIDENTIAL -
2 ATTORNEYS' EYES ONLY" designation. All copies of Confidential Material
3 shall be kept in secure areas of the offices of Attorneys of record or experts who
4 are consulted concerning this matter. Documents contained on magnetic or optical
5 media which are printed out by the receiving party shall be labeled with the same
6 designation in which they were produced in paper format and as designated on the
7 media itself. No persons other than those listed in Paragraphs 8 and 9 may make or
8 cause to be made any copies of Confidential Material.

9 13. Improper Disclosure of Confidential Material

10 If any Confidential Material is disclosed to any person other than in a
11 manner authorized by this Protective Order, the party responsible for the disclosure
12 or knowledgeable of such disclosure, upon discovery of the disclosure, shall
13 immediately inform the designating party of all facts pertinent to the disclosure
14 that, after due diligence and prompt investigation, are known to the party
15 responsible for the disclosure or knowledgeable of the disclosure (including
16 without limitation the name, address and employer of the person to whom the
17 disclosure was made), and shall immediately make all reasonable efforts to prevent
18 further disclosure by each unauthorized person who received such information.

19 14. Conclusion of Litigation

20 All provisions of this Protective Order restricting the communication or use
21 of Confidential Material shall continue to be binding after the conclusion of this
22 action, unless otherwise agreed or ordered. Upon conclusion of the litigation,
23 including the running of any time to appeal or to move for relief under F.R.C.P. 59
24 or 60 and the conclusion of any appeals or motions for such relief, a party in
25 possession of Confidential Material shall either (a) return all such Confidential
26 Material no later than thirty (30) days after conclusion of this action to counsel for
27 the party or non- party who provided such information, or (b) destroy all such
28 Confidential Material within the time period upon consent of the designating party

1 and certify in writing within thirty (30) days that the documents have been
 2 destroyed. Notwithstanding anything to the contrary above, the parties and their
 3 outside counsel shall be entitled to retain one copy of the pleadings and
 4 correspondence in the action for their files, provided that they return or destroy all
 5 exhibits to such pleadings or correspondence that have been designated as
 6 Confidential Material.

7 **15. Attorney-Client Privilege and Work Product Protections**

8 If information is produced in discovery that is subject to a claim of privilege
 9 or of protection as trial-preparation material, the party making the claim may notify
 10 any party that received the information of the claim and the basis for it. After being
 11 notified, a party must promptly return, sequester, or destroy the specified
 12 information and any copies it has and may not use or disclose the information until
 13 the claim is resolved. A receiving party may promptly present the information to
 14 the court under seal for a determination of the claim. If the receiving party
 15 disclosed the information before being notified, it must take reasonable steps to
 16 retrieve it. The producing party must preserve the information until the claim is
 17 resolved. The parties agree not to argue that the disclosure itself constitutes a
 18 waiver of any applicable privilege.

19 **GENERAL PROVISIONS**

20 **16. Jurisdiction**

21 Any person receiving Confidential Material under the terms of this
 22 Protective Order hereby agrees to subject himself or herself to the jurisdiction of
 23 this Court for purposes of any proceedings relating to the performance under,
 24 compliance with or violation of this Protective Order.

25 **17. No Admissions**

26 Unless the parties stipulate otherwise, evidence of the existence or
 27 nonexistence of a designation under this Protective Order shall not be admissible
 28 for any purpose, and adherence to this Protective Order in no way constitutes an

1 admission by any party that any information designated pursuant to this Protective
2 Order is or is not proprietary, confidential or a trade secret. Further, nothing herein
3 shall be deemed to waive any applicable privilege or work-product protection or to
4 affect the ability of a party to seek relief for an inadvertent disclosure of material
5 protected by privilege or work-product protection or to affect any party's right to
6 use its own documents and its own Confidential Material in its sole and complete
7 discretion. In addition, adherence to this Protective Order in no way constitutes a
8 waiver of any party's right to object to any discovery requests or admission of
9 evidence on any grounds or to affect any party's right to seek an order compelling
10 discovery with respect to any discovery request.

11 18. Subpoenas Issued in Other Actions

12 Nothing contained in this Protective Order is intended to be construed as
13 authorizing a party to disobey a lawful subpoena issued in another action.

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19. Modification of Protective Order

Any party for good cause may apply to the Court for a modification of this Protective Order. In the event such an application is made, the parties shall be bound by the terms of this Protective Order unless and until it is modified by the Court.

Stipulated and Agreed Upon by:

DATED: July ____, 2010 SONNETT ♦ INGOLD

By: _____

Anthony E. Sonnett
Sharon E. Sonnett
Attorneys for Defendant
HYUNDAI MOTOR AMERICA

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: _____

Nhung Le
Attorneys for Defendants
HYUNDAI CAPITAL AMERICA, JOHN
MORIARTY and SAM FROBE

MILLER BARONDESS, LLP

By: _____

Lukas J. Clary
Attorneys for Plaintiffs
ESTES AUTOMOTIVE GROUP INC. DBA
MERCED HYUNDAI, ESTES HOLDING
COMPANY, LLC, JIM ESTES, and CARL
SCHNEIDER

IT IS SO ORDERED.

DATED: July 21, 2010



Hon. Robert N. Block
United States Magistrate Judge

Exhibit A

Certification Concerning Material Covered By Stipulated Protective Order

I, the undersigned, hereby certify that I have read and understand the attached Protective Order entered in *Estes Automotive Group Inc. v. Hyundai Motor America, et al.*

I understand that Confidential Material being provided to me is governed by the terms of this Protective Order. I agree to be bound by the terms of the Protective Order and to submit to the personal jurisdiction of the United States District Court for the Central District of California with respect to any proceeding related to the enforcement of this Protective Order. I understand that a violation of the terms of the Protective Order may be grounds for a possible penalty of contempt of court. I will not disclose Confidential Material to anyone other than persons specifically authorized by the Order or use the Confidential Material for any purpose other than this case. I will maintain all such Confidential Material including copies, notes or other transcriptions made therefrom in a secure manner to prevent unauthorized access to it. I will return the Confidential Material including copies, notes or other transcriptions made therefrom to the counsel from whom I received such materials.

I declare under penalty of perjury that the foregoing is true and correct.

Name of Individual: _____

Company or Firm: _____

Address: _____

Telephone No.: _____

Relationship to this action and its parties:

Dated: _____ Signature: _____

1 Exhibit B

2 **CONSULTANT/EXPERT CERTIFICATION**

3 I, the undersigned, hereby certify that I have read and understand the
4 attached Protective Order entered in *Estes Automotive Group Inc. v. Hyundai*
5 *Motor America, et al.*

6 I understand that Confidential Material being provided to me is governed by
7 the terms of this Protective Order. I understand the terms of this Protective Order. I
8 agree to be bound by such terms and to submit to the personal jurisdiction of the
9 United States District Court for the Central District of California with respect to
10 any proceeding related to the enforcement of this Protective Order. I understand
11 that a violation of the terms of the Protective Order may be grounds for a possible
12 penalty of contempt of court. I will not disclose Confidential Material to anyone
13 other than persons specifically authorized by the Order or use the Confidential
14 Material for any purpose not appropriate or necessary to my participation in this
15 case.

16 I will maintain all such Confidential Material including copies, notes or
17 other transcriptions made therefrom in a secure manner to prevent unauthorized
18 access to it. I will return the Confidential Material including copies, notes or other
19 transcriptions made therefrom to the counsel from whom I received such materials.

20 I certify that I am not engaged in business as a competitor of any person or
21 entity currently a party to this action. If, at any time after I execute this
22 Consultant/Expert Certification and during the pendency of the Action, I become
23 engaged in business as or for a competitor of any person or entity currently a party
24 to this action, I will promptly inform the attorneys for the party who retained me in

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1 this action, and I will not thereafter review any Confidential Material unless and
2 until the Court in the action orders otherwise.

3 I declare under penalty of perjury that the foregoing is true and correct.
4

5 Name of Individual: _____

6 Company or Firm: _____

7 Address: _____

8 Telephone No.: _____

9 Relationship to this action and its parties:
10 _____
11 _____

12 Dated: _____ Signature: _____
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